

## Office of the Secretary, Education

## § 32.1

modify the amount proposed to be offset in the pre-offset notice or estimated in the decision of the hearing official.

(c) If the employee does not enter into a repayment agreement acceptable to the Secretary within the deadlines in this section, the Secretary may initiate an offset under this part. The Secretary continues to collect by offset until an employee enters in a satisfactory repayment agreement for the debt. The Secretary suspends an offset already commenced under circumstances described in § 31.5(a)(2).

(Authority: 5 U.S.C. 5514; 31 U.S.C. 3716)

### § 31.11 Offset process.

(a) The Secretary attempts to collect debts under this part within the shortest time authorized under—

(1) The offset schedule proposed in the pre-offset notice, unless modified by agreement or by the decision of a hearing official;

(2) A written repayment agreement with the employee; or

(3) The offset schedule established in the decision of the hearing official.

(b) In proposing an offset schedule under § 31.3 or establishing a repayment agreement under § 31.10, the Secretary also considers the expected period of Federal employment of the employee.

(c) Unless the Secretary determines, in his discretion, to delay or suspend collection, the Secretary effects an offset under this part—

(1) According to the terms agreed to by the employee pursuant to a timely request under § 31.10 to enter into a repayment agreement; or,

(2) After the deadlines in § 31.10(b) for requesting a repayment agreement with the Secretary.

(d) If the employee retires, resigns, or leaves Federal employment before the debt is satisfied, the Secretary collects the amount necessary to satisfy the debt by offset from subsequent payments of any kind, including a final salary payment or a lump sum annual leave payment, due the employee on the date of separation. If the debt cannot be satisfied by offset from any such final payment due the employee on the date of separation, the Secretary collects the debt from later payments of

any kind due the employee in accordance with the provisions of 4 CFR 102.4.

(e) The Secretary effects an offset under this part against payments owing to an employee of another Federal agency after completion of the requirements of this part, in accordance with the provisions of 5 CFR 550.1108.

(Authority: 5 U.S.C. 5514; 31 U.S.C. 3716)

## PART 32—SALARY OFFSET TO RECOVER OVERPAYMENTS OF PAY OR ALLOWANCES FROM DEPARTMENT OF EDUCATION EMPLOYEES

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AUTHORITY: 5 U.S.C. 5514; 31 U.S.C. 3716.

SOURCE: 52 FR 24957, July 1, 1987, unless otherwise noted.

### § 32.1 Scope.

(a) The Secretary establishes the standards and procedures in this part that apply to the deductions through offset from disposable pay of a current or former employee of the Department of Education to recover overpayments of pay or allowances.

(b) This part does not apply to—

(1) Recovery through offset of an indebtedness to the United States by an employee of the Department under a program administered by the Secretary of Education covered under 34 CFR part 31;

(2) The offset of an indebtedness to the United States by a Federal employee to satisfy a judgment obtained by the United States against that employee in a court of the United States;

(3) The offset of any payment to an employee of the Department of Education which is expressly allowed under statutes other than 5 U.S.C. 5514, except as to offsets of severance pay and/or lump sum annual leave payments as authorized under 31 U.S.C. 3716;

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- (4) Offsets under 34 CFR part 30; or
- (5) An employee election of coverage or of a change of coverage under a Federal benefits program which requires periodic deductions from pay if the amount to be recovered was accumulated over four pay periods or less.

(Authority: 5 U.S.C. 5514; 31 U.S.C. 3716)

### § 32.2 Definitions.

The following definitions apply to this part:

*Department* means the Department of Education.

*Disposable pay* means the amount that remains from an employee's pay after required deductions for Federal, State, and local income taxes; Social Security taxes, including Medicare taxes; Federal retirement programs; premiums for health and basic life insurance benefits; and such other deductions that are required by law to be withheld.

*Employee* means a current or former employee of the Department.

*Former employee* means a former employee of the Department who is entitled to pay from the Department or another agency.

*Pay* means basic pay, special pay, incentive pay, retired pay, retainer pay, or, in the case of an individual not entitled to basic pay, other authorized pay, including severance pay and/or lump sum payments for accrued annual leave.

*Paying agency* means a Federal agency currently employing an individual and authorizing the payment of his or her current pay.

*Secretary* means the Secretary of the Department of Education or an official or employee of the Department acting for the Secretary under a delegation of authority.

(Authority: 5 U.S.C. 5514; 31 U.S.C. 3716)

### § 32.3 Pre-offset notice.

At least 30 days before initiating a deduction from the disposable pay of an employee to recover an overpayment of pay or allowances, the Secretary sends a written notice to the employee stating—

- (a) The origin, nature and amount of the overpayment;

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- (b) How interest is charged and administrative costs and penalties will be assessed, unless excused under 31 U.S.C. 3716;

(c) A demand for repayment, providing for an opportunity for the employee to enter into a written repayment agreement with the Department;

(d) Where a waiver of repayment is authorized by law, the employee's right to request a waiver;

(e) The Department's intention to deduct 15 percent of the employee's disposable pay, or a specified amount if the disposable pay is severance pay and/or a lump sum annual leave payment, to recover the overpayment if a waiver is not granted by the Secretary and the employee fails to repay the overpayment or enter into a written repayment agreement;

(f) The amount, frequency, approximate beginning date and duration of the intended deduction;

(g) If Government records on which the determination of overpayment are not attached, how those records will be made available to the employee for inspection and copying;

(h) The employee's right to request a pre-offset hearing concerning the existence or amount of the overpayment or an involuntary repayment schedule;

(i) The applicable hearing procedures and requirements, including a statement that a timely petition for hearing will stay commencement of collection proceedings and that a final decision on the hearing will be issued not later than 60 days after the hearing petition is filed, unless a delay is requested and granted;

(j) That any knowingly false or frivolous statements, representations or evidence may subject the employee to applicable disciplinary procedures, civil or criminal penalties; and

(k) That where amounts paid or deducted are later waived or found not owed, unless otherwise provided by law, they will be promptly refunded to the employee.

(Authority: 5 U.S.C. 5514, 31 U.S.C. 3716)

### § 32.4 Employee response.

(a) *Voluntary repayment agreement.* Within 7 days of receipt of the written notice under § 32.3, the employee may submit a request to the Secretary to

arrange for a voluntary repayment schedule. To arrange for a voluntary repayment schedule, the employee shall submit a financial statement and sign a written repayment agreement approved by the Secretary. An employee who arranges for a voluntary repayment schedule may nonetheless request a waiver of the overpayment under paragraph (b) of this section.

(b) *Waiver.* An employee seeking a waiver of collection of the debt that is authorized by law must request the waiver in writing to the Secretary within 10 days of receipt of the written notice under §32.3. The employee must state why he or she believes a waiver should be granted.

(c) *Involuntary repayment schedule.* If the employee claims that the amount of the involuntary deduction will cause extreme financial hardship and should be reduced, he or she must submit a written explanation and a financial statement signed under oath or affirmation to the Secretary within 10 days of receipt of the written notice under §32.3. An employee who fails to submit this financial information in a timely manner waives the right to object to the involuntary repayment schedule at a hearing under §32.5. The Secretary notifies the employee, in writing, whether the Secretary will reduce the rate of the involuntary deduction.

(Authority: 5 U.S.C. 5514; 31 U.S.C. 3716)

### § 32.5 Pre-offset hearing—general.

(a) An employee who wishes a review of the existence or amount of the overpayment or an involuntary repayment schedule may request a pre-offset hearing. The pre-offset hearing does not review:

(1) The denial of a waiver of repayment under 5 U.S.C. 5584;

(2) The involuntary repayment schedule or financial hardship caused by the amount of the involuntary deduction from the employee's disposable pay, unless the employee has submitted the financial statement and written explanation required under §32.4(c); and

(3) The determination under paragraph (b) of this section that the pre-offset hearing is on the written submissions.

(b) Unless the Secretary determines that a matter reviewable under para-

graph (a) of this section turns on an issue of credibility or veracity or cannot be resolved by a review of the documentary evidence, the pre-offset hearing is on the written submissions.

(c) A pre-offset hearing is based on the written submissions for overpayments arising from:

(1) A termination of a temporary promotion;

(2) A cash award;

(3) An erroneous salary rate;

(4) Premature granting of a within-grade increase;

(5) A lump sum payment for annual leave;

(6) Unauthorized appointment to a position;

(7) An error on time and attendance records; or

(8) Other circumstances where the Secretary determines that an oral hearing is not required.

(d) The hearing is conducted by a hearing official who is not an employee of the Department or under the supervision or control of the Secretary.

(e) Formal discovery between the parties is not provided.

(Authority: 5 U.S.C. 5514; 31 U.S.C. 3716)

### § 32.6 Request for a pre-offset hearing.

(a) Except for an employee who has requested a waiver of collection of the debt under §32.4(b), an employee who wishes a pre-offset hearing must request the hearing within 15 days of receipt of the written notice given under §32.3. The Secretary waives the 15-day requirement if the employee shows that the delay was because of circumstances beyond his or her control or because of failure to receive notice and lack of knowledge of the time limit.

(b) An employee who has requested a waiver under §32.4(b) may request a hearing within 10 days of receipt of a determination by the Secretary denying a waiver.

(c) The request for a hearing must:

(1) Be in writing;

(2) State why the employee:

(i) Contests the existence or amount of the overpayment; or

(ii) Claims that the involuntary repayment schedule will cause extreme financial hardship;

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(3) Include all documents on which the employee is relying, other than those provided by the Secretary under § 32.3; any document which is a statement of an individual must be in the form of an affidavit; and

(4) Be submitted to the designated hearing official with a copy to the Secretary.

(d) If the employee timely requests a pre-offset hearing or the timelines are waived under paragraph (a) of this section, the Secretary:

(1) Notifies the employee whether the employee may elect an oral hearing; and

(2) Provides the hearing official with a copy of all records on which the determination of the overpayment and any involuntary repayment schedule are based.

(e) An employee who has been given the opportunity to elect an oral hearing and who does elect an oral hearing must notify the hearing official and the Secretary of his or her election in writing within 7 days of receipt of the notice under paragraph (d)(1) of this section and must identify all proposed witnesses and all facts and evidence about which they will testify.

(f) Where an employee requests an oral hearing, the hearing official notifies the Secretary and the employee of the date, time, and location of the hearing. However:

(1) The employee subsequently may elect to have the hearing based only on the written submissions by notifying the hearing official and the Secretary at least 3 calendar days before the date of the oral hearing. The hearing official may waive the 3-day requirement for good cause when the employee notifies the hearing official before the date of the hearing; and

(2) The request for a hearing of an employee who fails to appear at the oral hearing must be dismissed and the Secretary's decision affirmed.

(Authority: 5 U.S.C. 5514; 31 U.S.C. 3716)

#### § 32.7 Pre-offset oral hearing.

(a) Oral hearings are informal in nature. The Secretary and the employee, through their representatives, and by reference to the documentation submitted, explain their case. The employee may testify on his or her own

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behalf, subject to cross examination. Other witnesses may be called to testify only where the hearing official determines that their testimony is relevant and not redundant.

(b) The hearing official shall:

(1) Conduct a fair and impartial hearing; and

(2) Preside over the course of the hearing, maintain decorum, and avoid delay in the disposition of the hearing.

(c) The employee may represent himself or herself or may be represented by another person at the hearing. The employee may not be represented by a person whose representation creates an actual or apparent conflict of interest.

(d) Oral hearings are open to the public. However, the hearing official may close all or any portion of the hearing where to do so is in the best interests of the employee or the public.

(e) Oral hearings may be conducted by conference call—

(1) If the employee is located in a city outside the Washington, DC Metropolitan area;

(2) At the request of the employee; or

(3) At the discretion of the hearing official.

(Authority: 5 U.S.C. 5514; 31 U.S.C. 3716)

#### § 32.8 Pre-offset hearing on the written submissions.

If a hearing is to be held on the written submissions, the hearing official reviews the records and responses submitted by the Secretary and the employee under § 32.6.

(Authority: 5 U.S.C. 5514; 31 U.S.C. 3716)

#### § 32.9 Written decision.

(a) The hearing official issues a written decision stating the facts supporting the nature and origin of the debt and the hearing official's analysis, findings and conclusions as to the amount of the debt and the repayment schedule within 60 days of filing of the employee's request for a pre-offset hearing, unless the employee requests, and the hearing official grants, a delay in the proceedings.

(b) The hearing official decides whether the Secretary's determination of the existence and the amount of the overpayment or the extreme financial

hardship caused by the involuntary repayment schedule is clearly erroneous. A determination is clearly erroneous if although there is evidence to support the determination, the hearing official, considering the record as a whole, is left with a definite and firm conviction that a mistake was made.

(c) In making the decision, the hearing official is governed by applicable Federal statutes, rules and regulations.

(d) The hearing official decides the issue of extreme financial hardship caused by the involuntary repayment schedule only where the employee has submitted the financial statement and written explanation required under §32.4(c). Where the hearing official determines that the involuntary repayment schedule creates extreme financial hardship, he or she must establish a schedule that alleviates the financial hardship but may not reduce the involuntary repayment schedule to a deduction of zero percent.

(Authority: 5 U.S.C. 5514; 31 U.S.C. 3716)

### §32.10 Deductions process.

(a) Debts must be collected in one lump sum where possible. If the employee does not agree to a lump sum that exceeds 15 percent of disposable pay, the debt must be collected in installment deductions at officially established pay intervals in the amount established under:

(1) A voluntary repayment agreement;

(2) An involuntary repayment schedule where no hearing is requested; or

(3) The schedule established under the written hearing decision.

(b) Installment deductions must be made over a period not greater than the anticipated period of employment, except as provided under paragraph (d) of this section. If possible, the installment payment must be sufficient in size and frequency to liquidate the debt in, at most, three years. Installment payments of less than \$25 may be accepted only in the most unusual circumstances.

(c) Deductions must begin:

(1) After the employee has entered a voluntary repayment schedule;

(2) If a waiver is requested under §32.4(b), after the employee has been denied a waiver by the Secretary; or

(3) If a hearing is requested under §32.5, after a written decision.

(d) If the employee retires or resigns or his or her employment ends before collection of the debt is completed, the amount necessary to liquidate the debt must be offset from subsequent payments of any nature (for example, final salary payment and/or lump sum annual leave payment) due the employee on the date of separation. If the debt cannot be liquidated by offset from any such final payment due the employee on the date of separation, the debt must be liquidated by administrative offset pursuant to 31 U.S.C. 3716 from later payments of any kind due the employee, where appropriate. After the Secretary has complied with the procedures in this part, the Secretary may refer the debt to a paying agency for collection by offset under 5 CFR 550.1108.

(e) Interest, penalties and administrative costs on debts collected under this part must be assessed, in accordance with the provisions of 4 CFR 102.13.

(f) An employee's payment, whether voluntary or involuntary, of all or any portion of an alleged debt collected pursuant to this part may not be construed as a waiver of any rights which the employee may have under this part or any other provision of law, except as otherwise provided by law.

(g) Amounts paid or deducted pursuant to this part by an employee for a debt that is waived or otherwise found not owing to the United States or which the Secretary is ordered to refund must be promptly refunded to the employee.

(Authority: 5 U.S.C. 5514; 31 U.S.C. 3716)

## PART 33—PROGRAM FRAUD CIVIL REMEDIES ACT

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